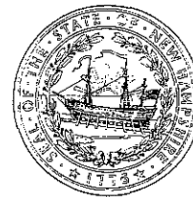




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

April 27, 2004

Robert Lamarre  
Lamarre and Sons  
PO Box 162 South Station  
Fall River, MA 02724

Re: Docket No. AF 04-009 - Administrative Fine by Consent Agreement

Dear Mr. Lamarre:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in this matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on April 22, 2004. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael McLarni,  
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
John R. Bush, P.E., DES WD  
Sharon Nall, DES WMD  
DES Public Information Officer  
Joy Hilton, USEPA, Region I



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Lamarre and Sons  
Attn: Robert Lamarre, Owner  
P.O. Box 162 South Station  
Fall River, MA 02724

**ADMINISTRATIVE FINE  
BY CONSENT**

**No. AF 04-009**

**I. INTRODUCTION**

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Lamarre and Sons pursuant to RSA 485-A:22, V. This Administrative Fine by Consent is effective upon signature by all parties.

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having main offices at 6 Hazen Drive, Concord, NH.
2. Lamarre and Sons ("Lamarre") is a commercial painting contracting business having a mailing address of P.O. Box 162 South Station, Fall River, MA 02724. Robert Lamarre is the owner.

**III. BACKGROUND**

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401 - 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to this program. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. On or about [date] Lamarre provided painting services to Wendy's Old Fashioned Hamburgers restaurant ("Wendy's") located at 56 Crystal Avenue in Derry, New Hampshire.
4. Lamarre does not possess a National Pollutant Discharge Elimination System ("NPDES") permit.
5. Hood Pond is a Class B surface water as defined in RSA 485-A:8, II.

**IV. ALLEGATIONS**

1. On August 26, 2002 DES personnel investigated a complaint of an unpermitted discharge of wash water to a storm drain located in the parking lot of the Wendy's located at 56 Crystal Ave, in Derry, New Hampshire.

**COPY**

2. Upon inspection, the material disposed appeared to consist of white latex paint and water. The material traveled from the drain outlet along an unnamed stream between Wendy's and Hood Pond. The Derry Fire Department HazMat team responded to the complaint and placed hay bales in the stream to reduce the material's impact on the stream.
3. The Derry Fire Department determined from the Wendy's store manager that Lamarre and Sons had completed painting the restaurant that morning. An empty 5 gallon bucket of white paint was found in the dumpster behind Wendy's.
4. Discharge from the Wendy's storm drain flows through a series of culvert pipes and ditches that cross beneath Manchester Ave, Concord Ave, and Franklin Street, before reaching Hood Pond.
5. DES collected samples of the stream water at three locations downstream of Wendy's storm drain including:
  - 1) the area of the worst observed contamination (downstream of the Franklin Street crossing) ("Area #1);
  - 2) upstream of the worst observed contamination (upstream of the Concord Ave crossing) (Area #2); and
  - 3) downstream beyond the observed impact of the discharge (approximately 150 feet upstream of Hood Pond ("Area #3"). DES subsequently submitted the samples to the State Laboratory for analysis of the Total Suspended Solids ("TSS") and turbidity.
6. Laboratory analyses of the collected wastewater samples detected turbidity values (NTU units) measured 42,76, and 4.2, for Area #1, Area #2, and Area #3, respectively. As the last sample was collected at a point downstream of any observed impact from the discharge, this sample (4.2) represents the naturally occurring background turbidity value. The laboratory analytical results are included as Attachment 1.
7. NH Code of Administrative Rules Env-Ws 1703 Water Quality Standards Section 1703.11 (b) Turbidity, states Class B waters shall not exceed naturally occurring conditions by more than 10 NTUs.
8. The August 26, 2002 turbidity analyses indicate a violation of the turbidity water quality standard by exceeding background levels by 71.8 NTUs.
9. NH Code of Administrative Rules Env-Ws 1703 Surface Water Quality Standards Section 1703.10 (b) Color, states Class B waters shall contain no color in such concentrations that would impair any existing or designated uses, unless naturally occurring.
10. Reports from the August 26, 2002 site investigation indicate the water stream was white from the paint wash water.
11. DES issued a Notice of Findings dated January 16, 2003 and requested Lamarre to provide additional information relative to its waste disposal practices, geographic service area, and Material Safety Data Sheets for all paints, chemicals and cleaning solutions used.
12. In its response letter to DES dated February 22, 2003, Lamarre admitted to cleaning out the paint brushes in the Wendy's parking lot storm drain using a garden hose.

13. RSA 485-A:13, I(a) states that "It shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the Department of Environmental Services."

14. Lamarre discharged an undetermined amount of wash water to the storm drain system whose discharge ultimately reaches the Hood Pond surface waters via an unnamed stream.

#### **V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING**

1. For violating RSA 485-A:13, I(a), Env-C 603.05(a) specifies a fine of \$2,000 per 5,000 gallons or portion thereof discharged or \$2,000 per hour or portion thereof that the sewage or other wastes are discharged, whichever is greater. Based on field inspection records, Lamarre discharged an unknown volume of painting wash water into the storm drain and ultimately into Hood's Pond. For this violation, DES is seeking a fine of \$2,000.

2. For violating surface water quality standards specified in Env-Ws 1703.10 (b), and Env-Ws 1703.11 (b), Env-Ws 603.08 (c) specifies a fine of \$2,000 per violation for each parameter violated. For this violation, DES is seeking \$4,000.

3. The total administrative fine that proposed by DES for the violations noted above is \$6,000.

4. Of the total \$6,000 fine, DES agrees to waive \$2,000.

5. Of the remaining \$4,000 fine, DES agrees to suspend \$3,000 contingent upon Lamarre complying with environmental laws administered by DES for two years from the effective date of this agreement.

6. Lamarre agrees to pay the remaining \$1,000 upon execution of this agreement by an authorized representative of Lamarre.

7. Payment made under Paragraph V. 6 and any payment that becomes due pursuant to Paragraph V. 5 shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit  
Attention: Michael Sclafani, Legal Assistant  
P.O. Box 95  
Concord, NH 03302-0095

8. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

9. By executing this Administrative Fine by Consent, Lamarre waives its rights to a hearing on or any appeal of the administrative fines identified in Paragraphs V.1 through V.4, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

10. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Lamarre, the Director of the Water Division, and the Commissioner of DES.

11. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of DES' rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

LAMARRE AND SONS

**COPY**

By: Robert Lamarre  
Duly authorized

Date 04-16-04

DEPARTMENT OF ENVIRONMENTAL SERVICES

**COPY**

Harry T. Stewart, P.E. Director  
Water Division

Date 04/22/04

**COPY**

Michael P. Nolin, Commissioner

Date 4/23/04

CERTIFIED MAIL 7000 0600 0023 9936 4728

Attachments: I - Laboratory Analytical Results

cc: Mark Harbaugh, DES Legal Unit  
John R. Bush, P.E., Administrator, DES/WD/WWEB  
Joy Hilton, USEPA, Region I  
Sharon L. Ducharme, P.E., DES/WD/WWEB